

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1114

INTRODUCER: Senator Bradley

SUBJECT: Emergency Medical Care and Treatment of Minors

DATE: January 14, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.	_____	_____	HP	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1114 broadens an exception to the general rule that medical treatment cannot be rendered without a patient’s consent. Under current law, parental consent is required for a physician to provide emergency medical care to a minor outside of a hospital or college health service. Similarly, parental consent is required for paramedics and other emergency medical services personnel to perform emergency care outside of a prehospital setting such as at an accident scene or in an ambulance. The bill allows physicians and emergency medical personnel to provide emergency medical care or treatment to a minor at any location without the consent of the minor’s parents.

The bill continues the requirements of current law that the need for care be the result of a genuine emergency and that appropriate medical personnel first attempt to identify and contact the minor’s parents, guardian, or legal custodian to obtain consent before providing emergency care or treatment. The bill does not disturb the longstanding principle that children do not have the legal capacity to consent to treatment.

II. Present Situation:

Emergency Medical Care or Treatment of Minors Without Parental Consent

Physicians and Osteopathic Physicians

Section 743.064(1), F.S., establishes the limited circumstances under which emergency medical care or treatment may be given to minors without parental consent. Parental consent is not required if a minor has been injured in an accident or is suffering from an acute illness, disease,

or condition and a physician¹ or osteopathic physician² believes, within a reasonable degree of medical certainty, that a delay in initiating or providing the emergency care or treatment would endanger the health or physical well-being of the minor. However, under this statute, the emergency care or treatment must be administered in a licensed hospital or in a college health service.

Paramedics, Emergency Medical Technicians, and Other Emergency Personnel

In a similar manner, paramedics, emergency medical technicians, and other emergency medical services personnel may provide emergency medical care or treatment to a minor without parental consent if the care is rendered in a “prehospital”³ setting and rendered in a manner consistent with chapter 401, F.S., the medical telecommunications and transportation chapter.

Prerequisites for Authorization

However, the authorization to perform emergency medical care or treatment without parental consent is valid only when:

- The minor’s condition has rendered him or her unable to provide the identity of his or her parents, guardian, or legal custodian, and no one who accompanies the minor to the hospital knows that information; or
- The parents, guardian, or legal custodian cannot be immediately located by phone at their residence or business.⁴

Essential Updates to Medical Records

After emergency care or treatment is administered to the minor, the medical personnel must notify the minor’s parents, guardian, or legal custodian of the provision of medical care or treatment as soon as possible. The hospital records must reflect why the hospital was unable to obtain consent before treatment and contain a statement from the attending physician that the emergency care or treatment was necessary for the minor’s health or physical well-being. The hospital records must then be open for inspection by the person who is legally responsible for the minor.⁵

Parents’ Bill of Rights

General Overview

In 2021, the Legislature passed the “Parents’ Bill of Rights” act that is now contained in ch. 1014, F.S.⁶ In general terms, the statutes provide that the state, its political subdivisions, any other governmental entity, or other institution may not infringe upon the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a minor child. In addition to providing a list of parental rights that govern a child’s education, the statutes also

¹ “Physician” is defined in s. 458.307(4), F.S., to mean a person who is licensed to practice medicine in this state.

² “Osteopathic physician” is defined in s. 459.003(4), F.S., to mean a person who is licensed to practice osteopathic medicine in this state.

³ The term “prehospital” is not defined in the statutes.

⁴ Section 743.064(2), F.S.

⁵ Section 743.064(3), F.S.

⁶ Chapter 2021-199, Laws of Fla.

contain provisions requiring a parent's consent before health care services may be provided to a minor child.

It should be noted that the provisions contained in the Parents' Bill of Rights do not apply to abortion, which is governed by chapter 390, F.S.⁷

Criminal Penalties and Exceptions

Section 1014.06(1), F.S., states that, *except as otherwise provided by law*, a health care practitioner or his or her employee, "may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor child without first obtaining *written* parental consent." Section 1014.06(2), F.S., states that, *except as otherwise provided by law or by a court order*, a provider "may not allow a medical procedure to be performed on a minor child in its facility without first obtaining *written* parental consent."⁸ A health care practitioner or other person who violates these provisions is subject to disciplinary action, as applicable, and commits a first degree misdemeanor. A first degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year and a fine that may not exceed \$1,000.⁹

Potential Complications of Construing the Emergency Treatment of Minors Provisions with the Parents' Bill of Rights

Before the Parents' Bill of Rights was enacted in 2021, it does not appear that any statutes expressly made the rendering of medical care, without parental consent, a crime.¹⁰ In *Brown v. Wood*,¹¹ however, the court acknowledged that a plaintiff may bring an action for negligence or assault and battery against a physician who did not obtain the informed consent of a parent before performing an operation on a minor child.

Depending on how the two "except as otherwise provided" provisions of the Parents' Bill of Rights are interpreted, it is unclear if physicians and osteopathic physicians are subject to criminal penalties for practicing emergency medicine on a minor. If the provision of emergency medical care on a minor without parental consent as permitted in s. 743.064, F. S., constitutes an exception to the Parents' Bill of Rights, then there is no criminal risk for the medical professional who provides emergency treatment in a licensed hospital or college health service. However, the provision of emergency medical care to a minor outside of those locations could be subject to a criminal penalty.

If the restrictions that limit physicians and osteopathic physicians to rendering emergency care or treatment to a licensed hospital or a college health service, were deleted, it would clarify that those professionals could render emergency treatment at additional locations without the fear of

⁷ See section 1014.06(3), F.S.

⁸ Section 1014.06(3), F.S., states that this section does not apply to abortion, which is governed by chapter 390. Section 1014.06(4), F.S., states that this section does not apply to services provided by a clinical laboratory, unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility.

⁹ See s. 775.082(4)(a), F.S., for penalties and s. 775.083(1)(d), F.S., for fines.

¹⁰ Arguably, the provision of medical care without consent constitutes the criminal offense of battery. Section 784.03(1), F.S., states that battery includes situations in which a person "[a]ctually and intentionally touches or strikes another person against the will of the other."

¹¹ *Brown v. Wood*, 202 So. 2d 125 (Fla. 2d DCA 1967).

committing a criminal act. In a similar manner, if the “prehospital setting” restriction that limits where paramedics, emergency medical technicians, and other emergency medical services personnel may provide emergency care to minors is removed, it would expand where they could render aid to minors without parental consent without the fear of committing a criminal act.

III. Effect of Proposed Changes:

The bill removes the restrictions on the locations where emergency medical care or treatment may be rendered for a minor without parental consent.

Physicians and Osteopathic Physicians

For physicians and osteopathic physicians, the emergency medical care or treatment location is no longer restricted to a licensed hospital or a college health service. However, before rendering emergency aid, these professionals must determine that the minor has been injured in an accident or is suffering from an acute illness, disease, or condition, and he or she believes, with a reasonable degree of medical certainty, that delaying in initiating or providing emergency medical care or treatment will endanger the minor’s health or well-being.

Paramedics, Emergency Medical Technicians, and Other Emergency Medical Services Personnel

In a similar manner, paramedics, emergency medical technicians, and other emergency medical services personnel are not limited to rendering aid in a prehospital setting. However, they must render emergency medical care consistent with the provisions of chapter 401, the Medical Telecommunications and Transportation chapter.

Additional Requirements for Rendering Emergency Care or Treatment

Other requirements in existing law still apply before emergency medical treatment or care may be provided. It is still necessary to determine that the information identifying the minor’s parents cannot be immediately obtained or that they cannot be reached by phone at their home or business and that the records be updated as soon as possible. However, the bill removes the reference to “hospital records” and replaces the term with “patient records.”

The final subsection of the statute that is amended by the bill deletes the phrase “hospital, or college health service” for the purpose of conforming to other changes by the bill.

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health states that SB 1114 will have no impact on the Department.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 743.064 of the Florida Statutes.

¹² Florida Department of Health, *Senate Bill 1114 Agency Analysis*, (Jan. 10, 2022) <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=29164&yr=2022>.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
